

September 20, 2005

(A-18J)

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
122 South Front Street
P. O. Box 1049
Columbus, Ohio 43216-1049

Dear Mr. Hodanbosi:

On May 9, 2005, you faxed us certain legislative proposed changes to sections 3704.01, 3704.011, 3704.02, and 3704.03 suggested by outside groups. Thank you for sharing these changes.

Based on the information provided, we are concerned that the Ohio Environmental Protection Agency (OEPA) may not be able to fulfill its obligations under the Clean Air Act (CAA) should these provisions be implemented. Our concerns include, but are not limited to, the draft provisions related to best available technology (BAT), the definition of air contaminant, the reduction in the scope of the minor new source review program, and monitoring of air pollution sources. Aspects of the draft prepared legislation are ambiguous, so a final analysis will depend on how these provisions are interpreted. However, provided below are two examples that illustrate possible concerns.

The draft proposed legislation which would make changes to the Ohio minor new source review program, including a change in the definition of BAT, appears to limit OEPA's ability to prescribe emissions limitations under the state's minor new source review program. The purpose of the minor new source review program is to control emissions from minor new sources as needed for the state to meet its obligation to attain and maintain ambient air quality standards. The CAA in 110(a)(2)(C) requires "a program to provide for ... regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved." An analysis would be needed to assure that the revised program satisfies this obligation.

The draft proposed language limits the director's ability to require a monitoring device, monitoring method, operating restriction, record, or report. Depending on

how this provision is interpreted, it might not allow OEPA to meet its obligations under Title V of the CAA. For example, 40 C.F.R. Part 70 requires the permitting authority to include monitoring to assure compliance where no monitoring exists in an underlying applicable requirement. The draft proposed monitoring provision can be interpreted as preventing the state from meeting this obligation under Part 70.

Thank you for the opportunity to share our initial thoughts on the proposed legislative changes. We understand there have been on-going discussions regarding this legislation such that concerns embodied in the draft version that formed the basis for our comments may be changing. Should that be the case, we look forward to continuing this dialogue as new language is developed.

Please don't hesitate to contact me if you have any questions.

Sincerely yours,

/s/

Stephen Rothblatt, Director
Air and Radiation Division